

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SECURITIES & EXCHANGE COMMISSION

Plaintiff

v.

PATRICIA B. ROCKLAGE, WILLIAM M.
BEAVER, and DAVID G. JONES

Defendants.

C.A. No. 05-CV-10074 MEL

**DEFENDANTS' MOTION TO RECONSIDER ORDER DENYING THEIR MOTION TO
DISMISS OR, IN THE ALTERNATIVE, TO CERTIFY ORDER FOR
INTERLOCUTORY APPEAL UNDER 28 U.S.C. §1292(b)**

Defendants Patricia M. Rocklage, William M. Beaver, and David G. Jones (collectively, "Defendants") respectfully move for reconsideration of the Court's August 23, 2005, Memorandum and Order ("Order") denying their motion to dismiss the Complaint or, in the alternative, for certification of the Order for interlocutory appeal pursuant to 28 U.S.C. §1292(b). Defendants submit, with due respect to the Court, that the Order was based on a materially incorrect reading of the facts of *United States v. O'Hagan*, 521 U.S. 642 (1997), controlling Supreme Court precedent which holds that there can be no liability under the misappropriation theory of insider trading where (as here) the defendant discloses her intent to her source. Alternatively, if reconsideration is denied, Defendants request this Court to certify for interlocutory appeal the dispositive legal question whether, in light of *O'Hagan*, the Securities and Exchange Commission can proceed against Defendants on a misappropriation theory despite

Rocklage's prior disclosure to her husband, the source of the inside information. Specifically as to certification, Defendants request that the Court amend the Order to include the required statutory language noting that the Order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." If the Court grants certification, then Defendants also request a stay of all further proceedings in this Court pending resolution by the First Circuit of the application for interlocutory appeal and the subsequent appeal. A supporting memorandum setting forth the full reasons and relevant authorities accompanies this motion.

Respectfully Submitted,

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